

HOUSE BILL NO. 427

INTRODUCED BY A. ROME

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS ON PAYMENT OF COSTS FOR EDUCATIONAL SERVICES TO INCLUDE CHILDREN WITH BEHAVIORAL PROBLEMS, DELINQUENT YOUTH, OR YOUTH IN NEED OF INTERVENTION WHO ARE PLACED IN RESIDENTIAL TREATMENT CENTERS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES REQUIRING COORDINATION WITH EITHER A RESIDENT SCHOOL DISTRICT OR THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR THE PROVISIONS OF EDUCATIONAL SERVICES PRIOR TO ISSUING A LICENSE FOR A YOUTH CARE FACILITY; AMENDING SECTIONS 20-7-419, 20-7-420, 20-7-435, 20-7-436, AND 41-3-1142, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-7-419, MCA, is amended to read:

"20-7-419. Rules. The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, ~~20-7-421~~, through 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

- (1) the calculation of tuition under 20-7-420;
- (2) the calculation and distribution of funds under 20-7-435; and
- (3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, residential treatment centers, and public schools."

Section 2. Section 20-7-420, MCA, is amended to read:

"20-7-420. Residency requirements -- financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

- (2) The county of residence is financially responsible for tuition and transportation as established

1 under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school
2 outside the district and county of residence because the student has been placed by a state agency in a
3 foster care or group home licensed by the state. The county of residence is not financially responsible for
4 tuition and transportation for a child who is placed by a state agency in an out-of-state public school or
5 an out-of-state private residential facility.

6 (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state
7 residential treatment center, residential treatment facility, or children's psychiatric hospital, as defined in
8 20-7-436, and the educational services are provided by a public school district under the provisions of
9 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the
10 services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's
11 costs of providing education and related services. Payments must be made from funds appropriated for
12 this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any
13 per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance
14 from available funds. However, the amount spent from available funds for this purpose may not exceed
15 \$500,000 during a biennium.

16 (4) A state agency that makes a placement of a child with a disability is responsible for the
17 financial costs of room and board and the treatment of the child. The state agency that makes an
18 out-of-state placement of a child with a disability is responsible for the education fees required to provide
19 a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

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21 **Section 3.** Section 20-7-435, MCA, is amended to read:

22 **"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals ~~and,~~**
23 **~~in-state residential treatment facilities, and in-state residential treatment programs centers~~ for eligible**
24 **~~children with emotional disturbances.~~** (1) It is the intent of the legislature that eligible children in in-state
25 children's psychiatric hospitals, ~~and~~ residential treatment facilities, and residential treatment centers be
26 provided with an appropriate educational opportunity in a cost-effective manner, including the provision
27 of a free appropriate public education for an eligible child with a disability that is consistent with state
28 standards for the provision of special education and related services. General education programs for
29 eligible children without disabilities must be provided in accordance with the requirements for a nonpublic
30 school under the provisions of 20-5-109.

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center for provision of an educational program for an eligible child in the children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center for provision of an educational program for an eligible child in the children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center, the superintendent of public instruction shall:

(a) ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center.

(5) If a children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center fails to provide an education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center or fails to negotiate a contract under the provisions of subsection (2) of this section, the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for

children attending the children's psychiatric hospital, ~~or~~ residential treatment facility, or residential treatment center. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education.

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308."

Section 4. Section 20-7-436, MCA, is amended to read:

"20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age, ~~who is emotionally disturbed as defined in 20-7-401~~, and:

(a) whose emotional or behavioral problem is so severe that the child or youth has been placed in a children's psychiatric hospital, residential treatment center, or residential treatment facility for inpatient treatment of emotional or behavioral problems; or

(b) who is a delinquent youth or a youth in need of intervention, as those terms are defined in 41-5-103, and who is placed in a residential treatment center for treatment.

(3) (a) "Residential treatment center" means a center in the state that:

(i) is licensed by the state as a youth care facility under 41-3-1142 with the specific designation

1 as a youth care facility-residential treatment center;
2 (ii) operates for the sole purpose of providing residential treatment to individuals under 19 years
3 of age; and
4 (iii) is accredited by the board of public education, northwest association of schools and colleges,
5 or other comparable organization.

6 (b) The term does not include:

7 (i) a state youth correctional facility, as defined in 41-5-103, or correctional programs operated
8 by or under contract with the department of corrections in which a primary population of youth who have
9 been adjudicated under 41-5-1513 and who are under the care and custody of the department is served;
10 or

11 (ii) programs for children and youth for whom treatment of chemical dependency is the primary
12 reason for treatment.

13 ~~(3)(4)~~ (a) "Residential treatment facility" means a facility in the state that:

14 (i) provides services for children or youth with emotional disturbances;

15 (ii) operates for the primary purpose of providing residential psychiatric care to individuals under
16 21 years of age;

17 (iii) is licensed by the department of public health and human services; and

18 (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing
19 psychiatric services to individuals under 21 years of age; or

20 (v) notwithstanding the provisions of subsections ~~(3)(a)(iii) and (3)(a)(iv)~~ (4)(a)(iii) and (4)(a)(iv),
21 has received a certificate of need from the department of public health and human services pursuant to
22 Title 50, chapter 5, part 3, prior to January 1, 1993.

23 (b) The term does not include programs for children and youth for whom the treatment of chemical
24 dependency is the primary reason for treatment."

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26 **Section 5.** Section 41-3-1142, MCA, is amended to read:

27 **"41-3-1142. Issuance of license -- authority of issuing agency -- rules.** (1) The Subject to
28 subsection (2), the department may issue licenses to persons operating youth care facilities or grant
29 approval of kinship or extended family care providers and prescribe the conditions upon which licenses and
30 approvals may be issued. The department may make rules necessary for the licensure or approval,

1 operation, and regulation of those facilities consistent with the welfare of the residents.

2 (2) Prior to granting a license, the department shall adopt rules requiring coordination by a youth
3 care facility applying for licensure with either the school district in which the facility is located or the
4 superintendent of public instruction, whichever entity will be involved in providing services or the payment
5 for the provisions of educational services. The coordination must ensure that students residing in the youth
6 care facility have access to an accredited education program and that the students' procedural safeguards
7 will be protected pursuant to the Rehabilitation Act of 1973, 29 U.S.C. 794, and special education
8 regulations of 20-7-402.

9 ~~(2)~~(3) The department may inspect all licensed facilities or approved homes and, as appropriate,
10 undertake action, including but not limited to the revocation of licenses and approvals.

11 ~~(3)~~(4) The person providing care in the facilities or homes shall give the department any
12 information that may be required and afford the department every reasonable opportunity for observing
13 the operation of the facilities or homes.

14 (5) At the end of each month, the department shall report to the superintendent of public
15 instruction the population of children for whom out-of-district agreements have been entered into who are
16 in residency in a licensed youth care facility. The report must include the name of the school district in
17 which the youth care facility is located, the capacity of the youth care facility, and the actual number of
18 children who resided in the youth care facility during the prior month for whom out-of-district attendance
19 agreements have been entered into."

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21 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2001.

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